

SB3329



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB3329

Introduced 2/14/2014, by Sen. Ira I. Silverstein

SYNOPSIS AS INTRODUCED:

225 ILCS 732/1-35
225 ILCS 732/1-65

Amends the Hydraulic Fracturing Regulatory Act. Establishes insurance requirements for operators when submitting a registration form. Authorizes the Department of Natural Resources to establish separate insurance requirements by rule if necessary. Adds references to "horizontal drilling with fracturing operations". Changes bonding requirements. Authorizes the Department to establish separate bonding requirements by rule.

LRB098 19584 MGM 54776 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Hydraulic Fracturing Regulatory Act is
5 amended by changing Sections 1-35 and 1-65 as follows:

6 (225 ILCS 732/1-35)

7 Sec. 1-35. High volume horizontal hydraulic fracturing and
8 horizontal drilling with fracturing operations permit
9 application.

10 (a) Every applicant for a permit under this Act shall first
11 register with the Department at least 30 days before applying
12 for a permit. The Department shall make available a
13 registration form within 90 days after the effective date of
14 this Act. The registration form shall require the following
15 information:

16 (1) the name and address of the registrant and any
17 parent, subsidiary, or affiliate thereof;

18 (2) disclosure of all findings of a serious violation
19 or an equivalent violation under federal or state laws or
20 regulations in the development or operation of an oil or
21 gas exploration or production site via hydraulic
22 fracturing or horizontal drilling with fracturing by the
23 applicant or any parent, subsidiary, or affiliate thereof

1 within the previous 5 years; and

2 (3) proof of insurance ~~to cover injuries, damages, or~~
3 ~~loss related to pollution or diminution in the amount of at~~
4 ~~least \$5,000,000,~~ from an insurance carrier authorized,
5 licensed, or permitted to do this insurance business in
6 this State that holds at least an A- rating by A.M. Best &
7 Co. or any comparable rating service. Subject to the
8 operator's right to maintain reasonable deductibles, and
9 subject to a maximum deductible or self-insured retention
10 of \$250,000, the operator shall obtain insurance coverage
11 in the following types and amounts:

12 (A) Workers' compensation insurance with statutory
13 limits.

14 (B) Employer's liability insurance with the
15 following minimum limits for bodily injury: by
16 accident, \$1,000,000 per accident; and by disease,
17 \$1,000,000 per employee with a per-policy aggregate of
18 \$5,000,000.

19 (C) Business automobile liability insurance
20 covering owned, hired, and non-owned vehicles, with a
21 minimum combined bodily injury, including death, and
22 property damage limit of \$1,000,000 per occurrence.

23 (D) Commercial general liability insurance
24 covering explosion, collapse, underground blowout,
25 cratering, premises and operations, personal and
26 advertising injury, products and completed operations,

1 independent contractors, and contractual liability
2 with the following minimum combined bodily injury,
3 including death, and property damage limits of:
4 \$1,000,000 per occurrence; \$2,000,000 products and
5 completed operations aggregate, and \$2,000,000 general
6 aggregate.

7 (E) Environmental impairment or pollution legal
8 liability insurance covering handling, removal,
9 seepage, storage, testing, transportation, and
10 disposal of materials. The coverage shall include loss
11 of use of property, cleanup cost, and defense,
12 including costs and expenses incurred in the
13 investigation, defense, or settlement of claims in
14 connection with any loss arising from the operation
15 site. The coverage shall apply to sudden and accidental
16 pollution resulting from the escape or release of
17 smoke, vapors, fumes, acids, alkalis, toxic chemicals,
18 liquids or gases, waste material, or other irritants,
19 contaminants or pollutants; and, must be maintained
20 with a minimum combined bodily injury, including
21 death, and property damage limit of \$10,000,000 per
22 occurrence;

23 (F) As an alternative to providing environmental
24 impairment or pollution legal liability insurance as
25 defined in this subsection, the operator may purchase
26 an umbrella policy that meets the requirements of

1 subparagraph (G) of paragraph (3) of subsection (a) of
2 this Section, or the operator may provide evidence of
3 self-insurance. The operator shall remain sufficiently
4 self-insured until the operation site is abandoned and
5 restored. The operator shall provide the Department
6 with evidence of sufficient self-insurance every 6
7 months. This provision does not limit the operator's
8 full responsibility in the event of a loss. An operator
9 is sufficiently self-insured and the environmental
10 impairment and pollution legal liability insurance
11 shall be waived if the operator provides one of the
12 following as evidence of self-insurance: a restricted
13 cash fund equal to the required environmental
14 impairment or pollution legal liability insurance, or
15 a surety bond, in a form acceptable to the Department,
16 equal to the required environmental impairment or
17 pollution legal liability insurance. An operator is
18 sufficiently insured and the environmental impairment
19 and pollution legal liability insurance shall be
20 waived if the operator obtains an umbrella liability
21 insurance following the form of the primary liability
22 coverage described in this subsection and providing
23 coverage with minimum combined bodily injury,
24 including death, and property damage limit of
25 \$25,000,000 per occurrence and \$25,000,000 annual
26 aggregate. Increased primary liability limits

1 equivalent to the umbrella liability insurance limits
2 specified will satisfy the umbrella liability
3 insurance requirements.

4 (G) If the operator does not purchase
5 environmental impairment or pollution legal liability
6 insurance or is not sufficiently self-insured, then
7 umbrella liability insurance with minimum limits of
8 \$35,000,000 per occurrence and \$35,000,000 annual
9 aggregate is required. A copy of the declaration page
10 of the policy shall be attached to the certificate of
11 insurance and the coverage shall include explosion,
12 collapse, underground blowout, cratering, sudden and
13 accidental pollution, handling, removal, seepage,
14 storage, testing, transportation and disposal of
15 materials. A copy of the endorsements providing this
16 coverage shall be attached to the certificate of
17 insurance.

18 (H) Control-of-well insurance to provide coverage
19 for the cost of regaining control of an out-of-control
20 well including the cost of re-drilling and clean up of
21 an incident with minimum limit of \$10,000,000. This
22 coverage shall include seepage, pollution, stuck drill
23 stem, evacuation expense of residents, loss of
24 equipment, experts, and damage to property that the
25 operator has in the operator's care, custody, or
26 control.

1 (4) If the insurance required in paragraph (3) of
2 subsection (a) is written on a claims-made form, coverage
3 shall be continuous, by renewal or extended reporting
4 period, for at least 60 months after the Department
5 approves the abandonment and restoration of the operation
6 site. Coverage, including renewals, shall contain the same
7 retroactive date as the original policy.

8 (5) The operator shall require each subcontractor
9 performing work on the operation site to obtain insurance
10 approved by the State, with an AM Best Rating of A or
11 better, or any comparable rating, that is appropriate for
12 the services the subcontractor is performing as follows:

13 (A) The subcontractor shall provide the
14 subcontractor's insurance at its own expense.

15 (B) The subcontractor's insurance shall name the
16 operator as an additional insured.

17 (C) The subcontractor shall keep the
18 subcontractor's insurance in effect until the
19 Department approves the abandonment and restoration of
20 the operation site.

21 (D) The operator shall provide the Department with
22 a copy of the certificates of insurance for each
23 subcontractor at least 30 days before the
24 subcontractor begins work at the designated site. The
25 operator shall provide to the Department copies of the
26 subcontractor's insurance policies and all

1 endorsements upon request at no cost to the Department.

2 (6) All insurance contracts and certificates of
3 insurance shall have an endorsement:

4 (A) stating that the State is an additional insured
5 to all applicable policies;

6 (B) stating that coverage may not be cancelled,
7 non-renewed, or materially changed in policy terms or
8 coverage without 30-days advance written notice by
9 mail to the Department;

10 (C) waiving subrogation against the State, its
11 officials, and employees, for bodily injury, including
12 death, property damage, or any other loss;

13 (D) stating that the operator's insurance is the
14 primary insurance;

15 (E) stating that liability, duty, standard of care
16 obligations, and the indemnification provision are
17 underwritten by contractual liability coverage that
18 includes these obligations: identifying the operation
19 site by address; identifying the Department as the
20 certificate holder; and striking the wording "endeavor
21 to" and "failure to mail" under the cancellation
22 provision on the certificate of insurance.

23 (7) The approval, denial, or failure to act by the
24 Department regarding any insurance supplied by the
25 operator or a subcontractor does not relieve the operator
26 of subcontractor of full responsibility or liability for

1 damages and accidents. Bankruptcy, insolvency, or the
2 insurance company's denial of liability does not exonerate
3 the operator or the subcontractor from liability.

4 A registrant must notify the Department of any change in
5 the information identified in paragraphs (1), (2), or (3) of
6 this subsection (a) at least annually or upon request of the
7 Department.

8 (b) Every applicant for a permit under this Act must submit
9 the following information to the Department on an application
10 form provided by the Department:

11 (1) the name and address of the applicant and any
12 parent, subsidiary, or affiliate thereof;

13 (2) the proposed well name and address and legal
14 description of the well site and its unit area;

15 (3) a statement whether the proposed location of the
16 well site is in compliance with the requirements of Section
17 1-25 of this Act and a plat, which shows the proposed
18 surface location of the well site, providing the distance
19 in feet, from the surface location of the well site to the
20 features described in subsection (a) of Section 1-25 of
21 this Act;

22 (4) a detailed description of the proposed well to be
23 used for the high volume horizontal hydraulic fracturing
24 operations or horizontal drilling with fracturing
25 operations including, but not limited to, the following
26 information:

1 (A) the approximate total depth to which the well
2 is to be drilled or deepened;

3 (B) the proposed angle and direction of the well;

4 (C) the actual depth or the approximate depth at
5 which the well to be drilled deviates from vertical;

6 (D) the angle and direction of any nonvertical
7 portion of the wellbore until the well reaches its
8 total target depth or its actual final depth; and

9 (E) the estimated length and direction of the
10 proposed horizontal lateral or wellbore;

11 (5) the estimated depth and elevation, according to the
12 most recent publication of the Illinois State Geological
13 Survey of Groundwater for the location of the well, of the
14 lowest potential fresh water along the entire length of the
15 proposed wellbore;

16 (6) a detailed description of the proposed high volume
17 horizontal hydraulic fracturing operations or horizontal
18 drilling with fracturing operations, including, but not
19 limited to, the following:

20 (A) the formation affected by the high volume
21 horizontal hydraulic fracturing operations or
22 horizontal drilling with fracturing operations,
23 including, but not limited to, geologic name and
24 geologic description of the formation that will be
25 stimulated by the operation;

26 (B) the anticipated surface treating pressure

1 range;

2 (C) the maximum anticipated injection treating
3 pressure;

4 (D) the estimated or calculated fracture pressure
5 of the producing and confining zones; and

6 (E) the planned depth of all proposed perforations
7 or depth to the top of the open hole section;

8 (7) a plat showing all known previous wellbores ~~well~~
9 ~~bores~~ within 1,500 ~~750~~ feet of any part of the horizontal
10 wellbore ~~well bore~~ that penetrated within 400 vertical feet
11 of the formation that will be stimulated as part of the
12 high volume horizontal hydraulic fracturing operations or
13 horizontal drilling with fracturing operations;

14 (8) unless the applicant documents why the information
15 is not available at the time the application is submitted,
16 a chemical disclosure report identifying each chemical and
17 proppant anticipated to be used in hydraulic fracturing
18 fluid or fracturing fluid for each stage of the hydraulic
19 fracturing operations or horizontal drilling with
20 fracturing operations including the following:

21 (A) the total volume of water anticipated to be
22 used in the hydraulic fracturing or fracturing
23 treatment of the well or the type and total volume of
24 the base fluid anticipated to be used in the ~~hydraulic~~
25 fracturing treatment, if something other than water;

26 (B) each hydraulic fracturing or fracturing

1 additive anticipated to be used in the hydraulic
2 fracturing or fracturing fluid, including the trade
3 name, vendor, a brief descriptor of the intended use or
4 function of each hydraulic fracturing or fracturing
5 additive, and the Material Safety Data Sheet (MSDS), if
6 applicable;

7 (C) each chemical anticipated to be intentionally
8 added to the base fluid, including for each chemical,
9 the Chemical Abstracts Service number, if applicable;
10 and

11 (D) the anticipated concentration in the base
12 fluid, in percent by mass, of each chemical to be
13 intentionally added to the base fluid;

14 (9) a certification of compliance with the Water Use
15 Act of 1983 and applicable regional water supply plans;

16 (10) a fresh water withdrawal and management plan that
17 shall include the following information:

18 (A) the source of the water, such as surface or
19 groundwater, anticipated to be used for water
20 withdrawals, and the anticipated withdrawal location;

21 (B) the anticipated volume and rate of each water
22 withdrawal from each withdrawal location;

23 (C) the anticipated months when water withdrawals
24 shall be made from each withdrawal location;

25 (D) the methods to be used to minimize water
26 withdrawals as much as feasible; and

1 (E) the methods to be used for surface water
2 withdrawals to minimize adverse impact to aquatic
3 life.

4 Where a surface water source is wholly contained within
5 a single property, and the owner of the property expressly
6 agrees in writing to its use for water withdrawals, the
7 applicant is not required to include this surface water
8 source in the fresh water withdrawal and management plan;~~;~~

9 (11) a plan for the handling, storage, transportation,
10 and disposal or reuse of hydraulic fracturing or fracturing
11 fluids and hydraulic fracturing or fracturing flowback.
12 The plan shall identify the specific Class II injection
13 well or wells that will be used to dispose of the hydraulic
14 fracturing or fracturing flowback. The plan shall describe
15 the capacity of the tanks to be used for the capture and
16 storage of flowback and of the lined reserve pit to be
17 used, if necessary, to temporarily store any flowback in
18 excess of the capacity of the tanks. Identification of the
19 Class II injection well or wells shall be by name,
20 identification number, and specific location and shall
21 include the date of the most recent mechanical integrity
22 test for each Class II injection well;

23 (12) a well site safety plan to address proper safety
24 measures to be employed during high volume horizontal
25 hydraulic fracturing operations or horizontal drilling
26 with fracturing operations for the protection of persons on

1 the site as well as the general public. Within 15 calendar
2 days after submitting the permit application to the
3 Department, the applicant must provide a copy of the plan
4 to the county or counties in which hydraulic fracturing
5 operations or horizontal drilling with fracturing
6 operations will occur. Within 5 calendar days of its
7 receipt, the Department shall provide a copy of the well
8 site safety plan to the Office of the State Fire Marshal;

9 (13) a containment plan describing the containment
10 practices and equipment to be used and the area of the well
11 site where containment systems will be employed, and within
12 5 calendar days of its receipt, the Department shall
13 provide a copy of the containment plan to the Office of the
14 State Fire Marshal;

15 (14) a casing and cementing plan that describes the
16 casing and cementing practices to be employed, including
17 the size of each string of pipe, the starting point, and
18 depth to which each string is to be set and the extent to
19 which each string is to be cemented;

20 (15) a traffic management plan that identifies the
21 anticipated roads, streets, and highways that will be used
22 for access to and egress from the well site. The traffic
23 management plan will include a point of contact to discuss
24 issues related to traffic management. Within 15 calendar
25 days after submitting the permit application to the
26 Department, the applicant must provide a copy of the

1 traffic management plan to the county or counties in which
2 the well site is located, and within 5 calendar days of its
3 receipt, the Department shall provide a copy of the traffic
4 management plan to the Office of the State Fire Marshal;

5 (16) the names and addresses of all owners of any real
6 property within 1,500 feet of the proposed well site, as
7 disclosed by the records in the office of the recorder of
8 the county or counties;

9 (17) drafts of the specific public notice and general
10 public notice as required by Section 1-40 of this Act;

11 (18) a statement that the well site at which the high
12 volume horizontal hydraulic fracturing operation will be
13 conducted will be restored in compliance with Section
14 240.1181 of Title 62 of the Illinois Administrative Code
15 and Section 1-95 of this Act;

16 (19) proof of insurance to cover the requirements under
17 paragraph (3) of subsection (a) injuries, damages, or loss
18 related to pollution in the amount of at least \$5,000,000;
19 and

20 (20) any other relevant information which the
21 Department may, by rule, require.

22 (c) Where an application is made to conduct high volume
23 horizontal fracturing operations or horizontal drilling with
24 fracturing operations at a well site located within the limits
25 of any city, village, or incorporated town, the application
26 shall state the name of the city, village, or incorporated town

1 and be accompanied with a certified copy of the official
2 consent for the hydraulic fracturing operations or horizontal
3 drilling with fracturing operations to occur from the municipal
4 authorities where the well site is proposed to be located. No
5 permit shall be issued unless consent is secured and filed with
6 the permit application. In the event that an amended location
7 is selected, the original permit shall not be valid unless a
8 new certified consent is filed for the amended location.

9 (c-5) The Department, in consultation with the Illinois
10 Emergency Management Agency, shall investigate and determine
11 the liability resulting from the operation of Class II
12 injection wells that accept oil, liquid natural gas, or natural
13 gas waste and fluids with regard to the financial
14 responsibility typically tied to plugging costs of the well or
15 other consequences of the injection operations. The Department
16 shall establish separate insurance requirements by rule if
17 necessary.

18 (d) The hydraulic fracturing or horizontal drilling with
19 fracturing operations permit application shall be accompanied
20 by a bond as required by subsection (a) of Section 1-65 of this
21 Act.

22 (e) Each application for a permit under this Act shall
23 include payment of a non-refundable fee of \$13,500. Of this
24 fee, \$11,000 shall be deposited into the Mines and Minerals
25 Regulatory Fund for the Department to use to administer and
26 enforce this Act and otherwise support the operations and

1 programs of the Office of Mines and Minerals. The remaining
2 \$2,500 shall be deposited into the Illinois Clean Water Fund
3 for the Agency to use to carry out its functions under this
4 Act. The Department shall not initiate its review of the permit
5 application until the applicable fee under this subsection (e)
6 has been submitted to and received by the Department.

7 (f) Each application submitted under this Act shall be
8 signed, under the penalty of perjury, by the applicant or the
9 applicant's designee who has been vested with the authority to
10 act on behalf of the applicant and has direct knowledge of the
11 information contained in the application and its attachments.
12 Any person signing an application shall also sign an affidavit
13 with the following certification:

14 "I certify, under penalty of perjury as provided by law
15 and under penalty of refusal, suspension, or revocation of
16 a high volume horizontal hydraulic fracturing permit, that
17 this application and all attachments are true, accurate,
18 and complete to the best of my knowledge."

19 (g) The permit application shall be submitted to the
20 Department in both electronic and hard copy format. The
21 electronic format shall be searchable.

22 (h) The application for a high volume horizontal hydraulic
23 fracturing permit may be submitted as a combined permit
24 application with the operator's application to drill on a form
25 as the Department shall prescribe. The combined application
26 must include the information required in this Section. If the

1 operator elects to submit a combined permit application,
2 information required by this Section that is duplicative of
3 information required for an application to drill is only
4 required to be provided once as part of the combined
5 application. The submission of a combined permit application
6 under this subsection shall not be interpreted to relieve the
7 applicant or the Department from complying with the
8 requirements of this Act or the Illinois Oil and Gas Act.

9 (i) Upon receipt of a permit application, the Department
10 shall have no more than 60 calendar days from the date it
11 receives the permit application to approve, with any conditions
12 the Department may find necessary, or reject the application
13 for the high volume horizontal hydraulic fracturing permit. The
14 applicant may waive, in writing, the 60-day deadline upon its
15 own initiative or in response to a request by the Department.

16 (j) If at any time during the review period the Department
17 determines that the permit application is not complete under
18 this Act, does not meet the requirements of this Section, or
19 requires additional information, the Department shall notify
20 the applicant in writing of the application's deficiencies and
21 allow the applicant to correct the deficiencies and provide the
22 Department any information requested to complete the
23 application. If the applicant fails to provide adequate
24 supplemental information within the review period, the
25 Department may reject the application.

26 (Source: P.A. 98-22, eff. 6-17-13; revised 11-12-13.)

1 (225 ILCS 732/1-65)

2 Sec. 1-65. Hydraulic fracturing permit or horizontal
3 drilling with fracturing; bonds.

4 (a) An applicant for a high volume horizontal hydraulic
5 fracturing or horizontal drilling with fracturing operations
6 permit under this Act shall provide a bond, executed by a
7 surety authorized to transact business in this State. The bond
8 shall be in the amount of \$100,000 ~~\$50,000~~ per permit, for the
9 first 10 wells drilled per corporation, then the bond adjusts
10 to \$50,000 per well for any additional wells drilled after the
11 first 10 wells, or a blanket bond of \$1,000,000 ~~\$500,000~~ for
12 all permits. If the applicant is required to submit a bond to
13 the Department under the Illinois Oil and Gas Act, the
14 applicant's submission of a bond under this Section shall
15 satisfy the bonding requirements provided for in the Illinois
16 Oil and Gas Act. In lieu of a bond, the applicant may provide
17 other collateral securities such as cash, certificates of
18 deposit, or irrevocable letters of credit under the terms and
19 conditions as the Department may provide by rule.

20 (b) The bond or other collateral securities shall remain in
21 force until the well is plugged and abandoned. Upon abandoning
22 a well to the satisfaction of the Department and in accordance
23 with the Illinois Oil and Gas Act, the bond or other collateral
24 securities shall be promptly released by the Department. Upon
25 the release by the Department of the bond or other collateral

1 securities, any cash or collateral securities deposited shall
2 be returned by the Department to the applicant who deposited
3 it.

4 (c) If, after notice and hearing, the Department determines
5 that any of the requirements of this Act or rules adopted under
6 this Act or the orders of the Department have not been complied
7 with within the time limit set by any notice of violation
8 issued under this Act, the permittee's bond or other collateral
9 securities shall be forfeited. Forfeiture under this
10 subsection shall not limit any duty of the permittee to
11 mitigate or remediate harms or foreclose enforcement by the
12 Department or the Agency. In no way will payment under this
13 bond exceed the aggregate penalty as specified.

14 (d) When any bond or other collateral security is forfeited
15 under the provisions of this Act or rules adopted under this
16 Act, the Department shall collect the forfeiture without delay.
17 The surety shall have 30 days to submit payment for the bond
18 after receipt of notice by the permittee of the forfeiture.

19 (e) All forfeitures shall be deposited in the Mines and
20 Minerals Regulatory Fund to be used, as necessary, to mitigate
21 or remediate violations of this Act or rules adopted under this
22 Act.

23 (f) The Department, in consultation with the Illinois
24 Emergency Management Agency, shall investigate and determine
25 the bonding requirements for operation of Class II injection
26 wells that accept oil, liquid natural gas, or natural gas waste

1 and fluids. The Department shall establish separate bonding
2 requirements by rule if necessary.

3 (Source: P.A. 98-22, eff. 6-17-13.)